



# TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road  
Tewksbury, MA 01876

Robert Dugan, Chairman  
Len Dunn, Vice Chair  
Gerald Kutcher  
**Associate Members:**  
Jaime Doherty  
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

## MEETING MINUTES MAY 28, 2015

The meeting was called to order by Rob Dugan, Chairman, at 6:30 p.m. at the Pike House (temporary town hall). Present at the meeting were Len Dunn, Gerald Kutcher, Jaime Doherty, Diane Bartalamia, and Melissa Johnson, Recording Secretary.

### Approval of Meeting Minutes – April 30, 2015

**MOTION:** Mr. Dunn made the motion to approve the April 30, 2015 meeting minutes; seconded by Mr. Kutcher and the motion carried 5-0.

### NEW HEARING

**Wilfred and Lisa Powers** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 3'9" x 13' front addition as shown on plans filed with this Board. Said property is located at **84 Brookfield Road**, Assessor's Map 98, Lot 23, zoned Residential.

Present was Wilfred and Lisa Powers of 84 Brookfield Road. Mrs. Powers explained that they recently refinanced their home in 2014. At that time, they were informed that as of 2010 their home is in a flood zone. The services of a land surveyor were obtained and the applicants were informed that the only way to obtain an elevation certificate is to remove the basement door; which is the only access to the basement. Mrs. Powers noted that the basement was previously an underground garage and one of the previous owners enclosed it. A suggestion has been made to install a bulk head and Mrs. Powers noted that there is no place for a bulk head. Mrs. Powers explained that they have been told that if it is "18 inches above grade foundation" and they enclose that area, they could possibly get out of the flood zone. Mrs. Powers noted that the home is a side entry garrison.

Mr. Dugan asked when home was constructed and Mrs. Power noted 1966.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Kutcher made the motion to close both parts of the hearing; seconded by Mr. Dunn and the motion carried 3-0.

**MOTION:** Mr. Dunn made the motion to approve Wilfred and Lisa Powers for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 3'9" x 13' front addition as shown on plans filed with this Board. Said property is located at 84 Brookfield Road, Assessor's Map 98, Lot 23, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

## CONTINUED NEW HEARINGS

**GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, d/b/a Shawsheen Place** for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned multi-family, commercial and village mixed use overlay districts.

Mr. Dugan noted that the applicant has requested to continue this matter to August 27, 2015.

**MOTION:** Mr. made the motion to continue GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, d/b/a Shawsheen Place for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned multi-family, commercial and village mixed use overlay districts; seconded by Mr. and the motion carried 3-0.

**Richard and Donna Sullivan** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated October 24, 2014 as filed with this Board. Said property is located at **542 Kendall Road**, Assessor's Map 79, Lot 103, zoned Residential.

Mr. Dugan recused himself from this hearing. Mr. Dunn conducted the meeting.

Mr. Dunn noted that the Board is in receipt of correspondence from Attorney Richard O'Neill requesting to withdraw this matter without prejudice.

**MOTION:**    **Mr. Kutcher made the motion to withdraw Richard and Donna Sullivan as a party aggrieved for review of a decision made by the Building Inspector in a letter dated October 24, 2014 as filed with this Board. Said property is located at 542 Kendall Road, Assessor's Map 79, Lot 103, zoned Residential without prejudice; seconded by Ms. Bartalamia and the motion carried 3-0. DUNN, KUTCHER, BARTALAMIA**

**TMC CF New England, LLC for Marc P. Ginsburg & Sons, Inc.** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District.

Present was Attorney John Smolak, Phil Henry of Civil Design Consultants, and Garrett Wood. Attorney Smolak noted that they were also before the Board regarding this matter in March, 2015. Attorney Smolak explained that this site is located at 365 Main Street, is approximately 1.88 acres, and is currently vacant. The shape of the site is irregular in that it is narrow and long. The site is located entirely in a commercial district as well as an interstate overlay district, by which an automobile service station is permitted by special permit of the Planning Board and a convenience store is allowed by right subject to Planning Board site plan review. Attorney Smolak explained that there was an original petition for a variance in October, 2014 where the Board granted front and side yard setbacks. At that time, the building was located closer to the northwest side of the site. Under this petition, the building, gas canopy, and dispensers have been flipped allowing the building to create a buffer between the gas operations and the residents located on that side of the site. The current requested relief relates to front yard setbacks only. Attorney Smolak reminded the Board that the Building Commissioner has determined there to be two front yards given the property abuts both Main Street and Old Main Street. The applicant is requesting a front setback of 30.3 feet from the building to Old Main Street, a front setback of 34.8 feet for the gas pumps, and 42.5 feet for the overhead canopy. Also, as a result in the changes of the building configuration, the proposal for a curvature in the access has been eliminated and the proposal is now a straight 90 degree curb cut directly across from the existing Walmart traffic signal.

Mr. Dugan noted that the previous proposal went to appeals court and the applicant filed for a new variance. The Board then requested the advice of town counsel to determine whether two variances could be issued. The Board has received correspondence from town counsel stating that two variances could be issued and suggested certain conditions be put in place including that one plan be committed to by the applicant. Attorney Smolak noted that they are in agreement with the terms set forth by town counsel.

Mr. Henry provided the members with an aerial photograph of the site showing the other uses in this area which include retail, commercial, residential, and heavy industrial. Mr. Henry explained that the fuel operation on the site has been moved farther north with respect to the original layout. The fuel dispensers have been shifted approximately 40 feet to the north and the underground storage tank has been shifted approximately 130 feet north. Other site

improvements include the elimination of the right out access. Mr. Henry noted that they feel that, overall, this plan is more suitable for the site.

Mr. Dugan explained that the Board is in receipt of correspondence from Attorney Smolak stating that the applicant would be in agreement with the conditions that may be placed upon the pending zoning variance; which include: applicant agrees to fully commit to the project (variance number 2), applicant agrees that variance 1 issued on November 18, 2014 would not be available to the applicant unless an appeal of the project involving variance 2 is successful, and variance 1 shall be considered rescinded or withdrawn without prejudice upon the granting of a building permit issued in conjunction with the project proposed using variance 2 provided the building permit for variance number 2 is not appealed.

Mr. Dugan opened the hearing to the public.

Paul Pereira of 274 Old Main Street came forward and noted that the daycare center located in this area is not shown on the aerial photograph provided to the Board. Mr. Pereira explained that he has expressed his concerns several times regarding the safety in this area as it is already a high crime area and he feels this will only add to the crime rate. Mr. Pereira noted that he is directly impacted by the project and no matter what the zoning allows, at the end of the day people live in this area. Mr. Pereira requested the Board deny the application based on his concerns.

Attorney Smolak explained that he feels they could mitigate some of the neighbor concerns as part of a site plan review process with the Planning Board as the concerns expressed are related to use and not the actual structure which is what is before the ZBA.

**MOTION:** Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.

**MOTION:** Mr. Kutcher made the motion to approve TMC CF New England, LLC for Marc P. Ginsburg & Sons, Inc. for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at 265 Main Street, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District, reference shall be made to Attorney Smolak's correspondence dated May 27, 2015; seconded by Mr. Dunn and the motion carried 3-0.

**DUGAN, DUNN, KUTCHER**

**John Berube for Greenmont Realty Trust** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw to construct a dwelling as shown on plans filed with this Board. Said property is located at **60 First Street**, Assessor's Map 81, Lot 198 and 167, zoned Residential.

Mr. Berube explained that the Board previously suggested he go before the Conservation Commission to see if they would be willing to allow the home to be pushed a few feet further back. The Commission heard the matter on April 13, 2015 and was not in favor of moving the

home further back as the impact to the wetlands is greater. The Conservation Commission continued the matter to June 3, 2015.

Mr. Berube provided the members with a copy of a plan that has been revised to address some of the Commission's and Board's concerns. Mr. Berube noted that a turnaround area has been included in driveway as requested by the Board.

Mr. Dugan asked if the Conservation Commission has provided any documentation on its determination and Mr. Berube noted that they have not. Mr. Dugan asked what additional information the Conservation Commission is seeking and Mr. Berube explained storm water runoff calculations, how much of the home will be in the no disturb zone, plantings, etc.

Mr. Dunn asked if the Commission will entertain moving the house back at all and Mr. Berube noted that he does not feel they will. Mr. Dunn asked what is located to the left as you look at the home and Mr. Berube noted a paper street. Mr. Berube explained that there are two drains that outlet onto this property that the DPW does not have plans for. Mr. Berube is in the process of looking for the original plans to see what was changed and by whom as he feels this has created a water problem on this lot by creating and/or expanding the wetlands. Mr. Berube noted that he does not intend to change any of the drains as he does not want to create any problems.

Ms. Bartalamia noted that she visited this site as abutters had expressed safety concerns with the home being so close to the street and there are many other homes in the area that are just as close to the street. Ms. Bartalamia also noted that the street is a dead end and does not have much traffic.

Mr. Dugan opened the hearing to the public.

Hector Montes of 49 New Jersey Road of came forward and explained noted that his concerns are with the water. Mr. Montes noted that he has been made aware of the other issues regarding the water and drainage onto Mr. Berube's property and explained that it is not coming from his property; it is coming from the town's property. Mr. Montes noted that he is satisfied with the project provided water does not become an issue for him in the future. Mr. Montes feels he has noticed a difference in the water table since the last home that was constructed in this area.

Mr. Berube explained that on Mr. Montes' side of the street there are rocks built in front of the pipe to prevent it from becoming clogged and on the other side there is nothing. Mr. Berube intends to clean this area up and noted that this will likely be addressed further by the Conservation Commission.

Ms. Bartalamia asked if Mr. Montes attended the Conservation Commission meeting and Mr. Montes confirmed this. Ms. Bartalamia explained that many of Mr. Montes' concerns are matters for the Conservation Commission and cannot be decided by the Board of Appeals.

**MOTION: Mr. Kutcher made the motion to close both parts of the public hearing; seconded by Ms. Bartalamia and the motion carried 3-0.**

**MOTION:** Mr. Kutcher made the motion to approve John Berube for Greenmont Realty Trust for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw to construct a dwelling as shown on plans filed with this Board. Said property is located at 60 First Street, Assessor's Map 81, Lot 198 and 167, zoned Residential, reference shall be made to the plan revised May 27, 2015 illustrating a driveway turnaround; seconded by Ms. Bartalamia and the motion carried 3-0.  
**DUGAN, KUTCHER, BARTALAMIA**

## **NEW HEARING**

**Mark Jolly** for a variance under Section 4130, Appendix B and a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw for a proposed addition as shown on plans filed with this Board. Said property is located at **29 Franklin Street**, Assessor's Map 94, Lot 245, zoned Residential.

Present was Mark and Josephine Jolly of 29 Franklin Street. Mr. Jolly noted that this hearing is only for the in ground pool and explained that upon final inspection of the pool it was determined that it is off 8 inches on the street side. The pool was to be 25 feet and it is actually 24.4 on the Trudeau Lane side.

Ms. Bartalamia asked if the pool is already installed and if a permit was obtained and Mr. Jolly confirmed this. Ms. Bartalamia asked how long the pool has been there and Mrs. Jolly explained for approximately 1 year. Ms. Bartalamia asked how the applicant became aware of this issue and Mr. Jolly explained that when final approval was requested from the Building Commissioner it was noted that it was 8 inches off. Ms. Bartalamia asked if the pool was put in the wrong spot and Mr. Jolly explained that there is a small bump out on the side of the pool that brought it closer.

Mr. Dunn asked if the applicants previously did work and Mrs. Jolly explained that they constructed an addition and were before the Board two years ago. Mr. Jolly noted that Mr. Dugan's son plays baseball with Mr. Jolly's. Mr. Dugan noted that he will not be voting on this matter; however, he does have some questions. Mr. Dugan asked what the bump out is and Mr. Jolly explained that it is a water decoration. Mr. Dugan noted that none of the structures on this property conform.

Mr. Dugan opened the hearing to the public.

Mary Fitzgerald of 31 Franklin Street came forward and noted that she spoke to Mr. Jolly about this matter as she was concerned that they were building again. Mr. Jolly showed Ms. Fitzgerald the pool and the area in question. Ms. Fitzgerald noted that her concern is that she contacted the building department approximately 4 times regarding the pool and was informed that there were no issues. Mr. Dugan explained that a permit was pulled to construct the pool which stated that it would be 25 feet away and when the pool was done it was not done in accordance with the plot plan.

**MOTION:** Mr. Kutcher made the motion to close both parts of the hearing; seconded by Ms. Bartalamia and the motion carried 3-0.

**MOTION:** Mr. Kutcher made the motion to Mark Jolly for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaws for an in ground pool as shown on plans filed with this Board. Said property is located at 29 Franklin Street, Assessor's Map 94, Lot 245, zoned Residential; seconded by Mr. Bartalamia and the motion carried 3-0.  
**DUNN, KUTCHER, BARTALAMIA**

**MOTION:** Mr. Kutcher made the motion to Mark Jolly for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaws for an in ground pool as shown on plans filed with this Board. Said property is located at 29 Franklin Street, Assessor's Map 94, Lot 245, zoned Residential; seconded by Mr. and the motion carried 3-0.  
**DUNN, KUTCHER, BARTALAMIA**

**New Business**

There was no new business.

**Old Business**

There was no old business.

**Adjourn.**

**MOTION:** Ms. Bartalamia made the motion to adjourn; seconded by Ms. Doherty and the motion carried 5-0.

*Approved: 6/25/15*

Approval of Minutes – April 30, 2015

## CONTINUED NEW HEARINGS

- 6:30 P.M. GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, dba Shawsheen Place** for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability “lock in period” set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor’s Map 48, Lot 33, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts.  
(Applicant requesting to be continued to August 27, 2015.)
- Letter dated 5/12/15 fr Attorney Regnante re: Request for Continuance.
- 6:30 P.M. Richard and Donna Sullivan** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated October 24, 2014 as filed with this Board. Said property is located at **542 Kendall Road**, Assessor’s Map 79, Lot 103, zoned Residential.
- Letter dated 5/27/15 fr Attorney O’Neill re: Request for Continuance.
- 6:30 P.M. TMC CF New England LLC for Marc P. Ginsburg & Sons, Inc.** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor’s Map 22, Lot 13, zoned Commercial/Interstate Overlay District.
- 6:30 P.M. John Berube for Greenmont Realty Trust** for a variance under Section 4130 Appendix B of the Tewksbury Zoning Bylaw to construct a dwelling as shown on plans filed with this Board. Said property is located at **60 First Street**, Assessor’s Map 81, Lots 198 and 167, zoned Residential.

## NEW HEARINGS

- 6:30 P.M. Wilfred and Lisa Powers** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 3’9” x 13’ front addition as shown on plans filed with this Board. Said property is located at **84 Brookfield Road**, Assessor’s Map 98, Lot 23, zoned Residential.
- Application packet dated 4/28/15.
- 6:30 P.M. Mark Jolly** for a variance under Section 4130, Appendix B and a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw for a proposed addition as shown on plans filed with this Board. Said property is located at **29 Franklin Street**, Assessor’s Map 94, Lot 245, zoned Residential.
- Application packet dated 5/5/15.